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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,280	07/31/2000	Axel Schulte	40098	9762

7590

03/19/2003

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EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

7

DATE MAILED: 03/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/601,280

Applicant(s)

SCHULTE

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment B, submitted as Paper No. 6 on January 6, 2003, has been entered. Claims 1-9 have been cancelled as requested and replaced with new claims 10-27.
2. Additionally, Applicant requests entry of a substitute specification. However, said substitute specification has not been entered due to the lack of a proper marked-up version. The marked-up version consists of, in order of submission, page 1 of PCT modified application, pages 1-3 of application, pages 2-5 of modified sheets, page 4 of application, an enlarged copy of "Brief Description of the Drawings" page with text cut off along the right margin, pages 5 and 6 of the application, and pages 8 and 9 of modified sheets. Thus, the marked-up version is incomprehensible.
3. The cancellation of claims 1-9 renders moot the objections and rejections as set forth in sections 5-16 of the last Office Action.

### ***Specification***

4. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
5. The disclosure is objected to because of the following informalities: the lack of subheadings. Appropriate correction is required.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 15 and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/601,279. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 15 and 16 fully encompass the invention of claim 1 of the '279 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 10-27 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had

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possession of the claimed invention. Claim 10 recites the limitation "said interlocking elements on said carpet surface having at least one of different shapes, different dimensions and different relative adjacent spacings relative to said interlocking elements on said floor surface."

Specification is silent with respect to any differences between the interlocking elements of the carpet and floor surfaces of the micro-adhesive closing. Thus, claim 10 is considered to contain new matter. Claims 11-27 are rejected for their dependency upon claim 10.

10. Claims 21 and 22 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Amended claims 21 and 22 recited the limitations "loose leno weave" and "flat knit," respectively. The specification teaches a "loose breaker fabric" or a fabric of "smooth stitches." The terms "leno weave" and "breaker fabric" are not known in the textile arts as synonymous terms and there is nothing on record to establish their equivalency. Similarly, the terms "flat knit" and "smooth stitches" are not known in the textile arts as synonymous terms and there is nothing on record to establish their equivalency. Thus, claims 21 and 22 are rejected as containing new matter.

11. Claim 26 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 26 recites the limitation "rivited tuft." The specification is silent with respect to the term "rivited tuft" and said term is not commonly known in the textile art. Thus, claim 16 is rejected as containing new matter.

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12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 21 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

14. Claim 21 is rejected for the use of the phrase "loose leno weave." The term "loose" is a relative term which is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

15. Claim 26 is indefinite because it is unclear what the scope of "rivited tuft" is. As such, the claim is not further examined on the merits.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 10-14 and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 195 32 685 issued to Leopold in view of DE 196 46 318 issued to Hammer and in further view of US 5,753,336 issued to Stull and US 6,298,624 issued to Pacione.

Applicant claims a carpet installation system comprising a carpet having a loopless backing, a loopless floor material, and an underlay material lying therebetween. Said underlay

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material comprises a double-sided hooked surface which engages said loopless backing of the carpet and the loopless floor material. The hooked surfaces have at least one of different shapes, different dimensions, and different relative spacings compared to the other hooked surfaces. The loopless materials may be a felt, fleece, leno weave, knit, or needled nonwoven. The hooked surface is "a micro-adhesive closing" according to DE 196 46 318 (i.e., Hammer reference) (specification, page 2, lines 12-13). The hooks are mushroom or plate-like in shape and have concave depressions on the top of said hooks.

Leopold discloses a floor covering comprised of two layers (abstract). The first layer comprises an upper layer of the face of the floor covering (1) and a lower layer of a felt (2) (abstract). The lower felt layer (2) connects with an underlayer (4) comprised of an "upwards pointing surface with properties which allow it to engage with the felt" (i.e., hooked material). The other side of the underlayer (4) may be glued to a floor substrate (5).

Thus, Leopold teaches the presently claimed invention with the exception of (a) the claimed micro-adhesive closing with hooks having a concave depression and (b) the underlay being double-sided to hook to the floor substrate in addition to the carpet substrate. With respect to the former, as noted above, said micro-adhesive closing is known in the art, as evidenced by the Hammer reference. Thus, it would have been obvious to one skilled in the art to employ the Hammer hooked material for the hooked material of Leopold, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. One would be motivated to choose the Hammer hooked material for its inexpensiveness and its integration of said hooks with a carrier material.

With respect to the latter limitation, the knowledge of double-sided underlays are evidenced by Stull, Figures 7 and 8 and Pacione, Figure 31. Thus, it would have been obvious to modify the Leopold invention by providing a double-sided hooked underlay material.

Motivation to do so would be to provide releasable engagement of the carpet to a flooring underlay without the use of an adhesive or a special looped surface of said flooring underlay.

Additionally, it would have been obvious to have said hooked surfaces be different in some manner, such as shape, dimension, and/or spacing in order to provide a difference in peel strength between the two interfaces. Therefore, claims 10-14 and 19-27 are rejected as being obvious over the cited prior art.

18. Claims 10-14 and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,298,624 issued to Pacione in view of DE 196 46 318 issued to Hammer.

As noted above, Pacione teaches a double-sided hooked anchor sheet. Specifically, the anchor sheet has a plurality of hooks on its upper surface for connection to a carpet backing material and a plurality of hooks on its lower surface for connection to a lower layer, such as a cushion underlay (col. 13, lines 48-64). Pacione teaches said hook and loop technology for said anchor sheet, but also explicitly teaches joining by any conventional method (col. 13, line 64-col. 14, line 6). Thus, it would have been obvious to one of ordinary skill in the art to employ the Hammer micro-adhesive closure in order to eliminate the need for looped carpet backs and looped cushion underlays. Additionally, it would have been obvious to have said hooked surfaces be different in some manner, such as shape, dimension, and/or spacing in order to provide a difference in peel strength between the two interfaces. Therefore, claims 10-14 and 19-27 are rejected as being obvious over the cited prior art.



***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

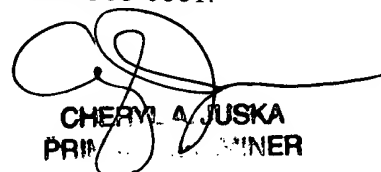
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

cj  
March 14, 2003

  
**CHERYL A. JUSKA**  
**PRIM. EXAMINER**